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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,876	09/29/2000	Joseph Librizzi	JBP-521	3307

7590

04/04/2003

Philip S Johnson
One Johnson & Johnson
New Brunswick, NJ 08933-7003

EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 04/04/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/676,876

Applicant(s)

LIBRIZZI ET AL.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-22 and 25-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-22 and 25-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 18-22 and 25-37 are pending in this application.

Request for Continued Examination (RCE)

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2003 has been entered.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on February 25, 2003 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered part of the information disclosure statement. The examiner did not consider the non-patent literature documents as there were not provided in the IDS.

Action Summary

3. Examiner acknowledges the cancellation of claims 10, 11, 13-17, 23 and 24 and the addition of claims 30-37.

4. The rejection of claims 16, 17, 23 and 24 under 35 U.S.C. 103(a) over Mettler is hereby withdrawn as claims have been cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-22 and 25-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,524,626).

Chen discloses topical products comprising ginseng berry juice and extracts to moisturize the skin. Examples 1-28, columns 4-17 teach compositions which are used as shampoos, wash or bath compositions, lotions, etc. which comprises a sensory fragrance (i.e. ginseng berry extract). Column 3, lines 48-50 and 60-65 teach that the ginseng root can stimulate physical and mental activity and the application of ginseng berries juice has pleasurable sensory effects on the user. Also, taught in the examples are additional additives that have pleasurable sensory effects on the user such as orange, rose, etc. The prior art does not teach the effects of the composition such as cortisol level or sIgA level or whom the composition is intended for i.e. child.

It is the position of the examiner that the effects of cortisol levels and/or sIgA levels would be inherent in this composition to one of ordinary skill in the art since the claimed invention is drawn to a composition comprising a sensory fragrance. Since the prior art discloses the same type of composition then the effects will also be the same. With respect to whom the composition is intended for i.e. a child, it would have been

obvious to one of ordinary skill to administer the composition to whoever needs it effects
i.e. an adult or a child.

Conclusion

6. Claims 18-22 and 25-37 stand rejected.

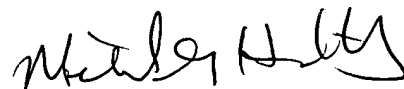
Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George


MICHAEL G. HARTLEY
PRIMARY EXAMINER